74-1636

Supreme Court, U. S.
FILED
JUN 13 1975
MICHAEL RODAK, JR., CLERK

VOLUME II

In the Supreme Court of the United States

In re the Marriage of MILDRED M. MITCHELL,
Appellee,

vs.

ERIC G. MITCHELL,
Appellant.

APPENDIX TO

Jurisdictional Statement

ERIC G. MITCHELL

Castro Valley, California 94546
3784 Castro Valley Boulevard
Space No. 26
Telephone: (415) 537-5148

In Propria Personna

NOTICE OF ENTRY OF JUDGMENT (MARRIAGE)

Harold D. Mefford, 1065 "A" Street, Hayward, Calif. 94541, Telephone: 538-2411, Attorney for Petitioner.

Filed Jun 7 1972. Jack G. Blue, County Clerk, By Nora Glinn, Deputy.

Superior Court of California, County of Alameda In re the marriage of Petitioner: Mildred M. Mitchell and Respondent: Eric G. Mitchell. Case Number H 19878, Notice of Entry of Judgment (Marriage).

You are notified that the following judgment in this cause was entered in Judgment Book No. 271, page 44, on Jun 6 -1972: Interlocutory Judgment of Dissolution of Marriage. Jack G. Blue, Clerk, By Pamela Cooper, Deputy.

Appeal Order

Eric G. Mitchell, In Pro Per., 3784 Castro Valley Blvd., Space 26, Castro Valley, California, 94546. Filed Aug 4 1972. Jack G. Blue, County Clerk. Porter, Deputy. In the Court of Appeal of the State of California In and for the County of Alameda. Eric G. Mitchell, Respondent and Appellant vs Mildred M. Mitchell, Plaintiff and Respondent. Civ. No. H 19878. ORDER

Notice if hereby given that Eric G. Mitchell, respondent, hereby appeals to the Court of Appeal of the State of California, in and for the County of Alameda from the judgment rendered on June 6, 1972 and entered in Judgment Book 271, page 44 rendered on June 6, 1972 in favor of Mildred M. Mitchell, plaintiff, and the order granting Mildred M. Mitchell, plaintiff, a new trial on

the issue of substantial 50-50 split of community property and the sale of the home to effect this substantial 50-50 split of community property, and other, based on the minutes of the court and by affidavit and from each of them. Dated August 4, 1972. By (signed) Eric G. Mitchell, In Pro. Per.

Appellate Decision

Not to be published in official reports. In the Court of Appeal of the State of California, First Appellate District, Division Three. In re the Marriage of Mildred M. and Eric G. Mitchell. Mildred M. Mitchell, Respondent, v. Eric G. Mitchell, Appellant. Filed Dec. 3, 1974. Court of Appeal, First App. Dist. Clifford C. Porter, Clerk. By Deputy. 1 Civil No. 33823 (Sup. Ct. No. H 19878)

The only issue which appellant has properly raised on appeal (see Cal. Rules of Court, rule 15; Travelers Indem. Co. v. Colonial Ins. Co. (1966) 242 Cal.App.2d 227, 242; People ex rel. Dept. of Public Works v. Garden Grove Farms (1965) 231 Cal.App.2d 666, 670; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, 420, 442, pp. 4388-4389, p. 4405) is whether the superior court failed to make an equal division of community property assets as required by section 4800 of the Civil Code, and whether a sale of the family residence was required to effect such a distribution.

Although conflicting evidence was presented concerning the valuation of certain items of community property, in reviewing the evidence all conflicts must be resolved in favor of respondent; on appeal, the inquiry of this court is whether there is substantial evidence, contradicted or uncontradicted, which will

support the conclusion reached by the trial court. (Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 925-926; Baron v. Baron (1970) 9 Cal.App.3d 933, 939.) Accepting respondent's valuation of the assets, we find that appellant received one-half of the community property assets subject to distribution. It was not necessary for the court to order a sale of the family residence to effect this distribution inasmuch as a promissory note secured by a lien on the second deed of trust on the residence was given to appellant to equalize the division of assets.

The judgment is affirmed. The purported appeal from an order granting respondent a new trial is dismissed, as the record fails to indicate entry of such an order. Brown (H.C.), J. We concur: Draper, P.J. Good, J.* *Retired Judge of the Superior Court sitting under assignment by the Chairman of the Judicial Council.

State Supreme Court Decision

To: Eric G. Mitchell, Esq., 3784 Castro Valley Blvd., Sp. 26, Castro Valley, Ca. 94546. Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102. Jan. 29, 1975. I have this day filed Order Hearing Denied. In re: 1 Civ. No. 33823, Mitchell vs. Mitchell. Respectfully, G. E. Bishel, Clerk.

Final Judgment (Marriage) of Dissolution

Harold D. Mefford, Attorney at Law, 1065 "A" Street, Suite 202, Hayward, California, 94541, Telephone: 538-2411, Attorney for Petitioner. Endorsed.

Filed Mar. 18, 1975. Rene C. Davidson, County Clerk By: Pat Clark, Deputy. Superior Court of California, County of Alameda. In re the marriage of Petitioner: Mildred M. Mitchell and Respondent: Eric G. Mitchell. Case number H-19878. Final Judgment (Marriage) of Dissolution. The court acquired jurisdiction of the respondent on 12/23/70 by: Service of process on that date and respondent having appeared. The court orders that: Pursuant to Civil Code Section 4506(1), a Final Judgment of Dissolution be entered, and that all of the provisions of the interlocutory judgment, which was entered on 4-5-72, signed 6-2-72 except as otherwise set out below, be made binding the same as if set forth in full, and that the parties be restored to the status of unmarried persons. George W. Phillips, Jr., Judge of the Superior Court. Dated Mar. 18, 1975.